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14:42:54 1 document before?

14:42:56 2 A. I was present, yes.

14:42:57 3 Q. Okay. On the second page, the

14:42:58 4 second paragraph talks about Mr. Brinker

14:43:01 5 informing the Board that Mr. Herron had

14:43:05 6 resigned, correct?

14:43:06 7 A. He received a letter of

14:43:07 8 resignation, yeah.

14:43:09 9 Q. But you already knew that,

14:43:11 10 correct?

14:43:12 11 A. No, no. There's dates again, I

14:43:18 12 don't know when he mailed, or when he called

14:43:20 13 me.

14:43:22 14 Q. Okay. I believe Mr. Herron

14:43:24 15 testified that he called you that night,

14:43:27 16 meaning the same day he gave the letter to Mr.

14:43:31 17 Brinker, which was July 27th, 1999. Does that

14:43:37 18 refresh your recollection?

14:43:38 19 MR. BURKE: Objection. Calls for

14:43:39 20 speculation. You may answer. What page are we

14:43:48 21 referring to now? I'm sorry.

14:43:50 22 MR. BRAUTIGAM: Second page.

14:43:50 23 MR. BURKE: Okay.

14:43:51 24 MR. BRAUTIGAM: Second paragraph.

14:43:53 25 MR. BURKE: Thank you. Okay.

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14:46:08 1 almost a month retroactive? I don't remember

14:46:12 2 that.

14:46:13 3 Q. Okay.

14:46:13 4 A. Or am I reading that wrong?

14:46:14 5 Q. Okay. Mr. Zoellner, let me ask a

14:46:16 6 different question. Do you know what an 8-K

14:46:21 7 is? 8-K?

14:46:25 8 A. It's eight strike-outs.

14:46:27 9 MR. BURKE: Objection. Calls for

14:46:28 10 speculation.

14:46:29 11 Q. Aside from baseball, in the

14:46:31 12 business context, do you know what an 8-K is?

14:46:34 13 A. I forget.

14:46:36 14 Q. Did OHSL ever issue 8-Ks?

14:46:41 15 A. 8-Ks, I don't remember.

14:46:43 16 Q. Okay. Did the Board collectively

14:46:45 17 ever consider and reject the idea of filing an

14:46:48 18 8-K with respect to Mr. Herron's resignation?

14:46:51 19 MR. BURKE: Objection, foundation.

14:46:53 20 A. I'm not familiar with that at all.

14:46:54 21 Don't know anything about that.

14:46:57 22 Q. Okay. Was Mr. Herron's

14:46:59 23 resignation ever disclosed to the shareholders?

14:47:03 24 MR. BURKE: Objection.

14:47:03 25 A. I do not know that.

14:45:02 1 BY MR. BRAUTIGAM:

14:45:03 2 Q. Okay. Mr. Zoellner, the question

14:45:04 3 is: Does this refresh your recollection --

14:45:07 4 A. Yes.

14:45:07 5 Q. -- that you knew Mr. Herron had

14:45:08 6 already resigned?

14:45:10 7 MR. BURKE: Does this refresh his

14:45:11 8 recollection of whether he knew the date of Mr.

14:45:15 9 Herron's --

14:45:16 10 MR. BRAUTIGAM: Yes, plus my

14:45:18 11 comment that he testified that Mr. Herron

14:45:20 12 called Mr. Zoellner on July 27th.

14:45:23 13 MR. BURKE: Mr. Zoellner didn't

14:45:26 14 testify to that.

14:45:26 15 MR. BRAUTIGAM: Mr. Herron

14:45:27 16 testified to that.

14:45:34 17 MR. BURKE: Objection to form.

14:45:34 18 A. We're with dates again. This is

14:45:34 19 the August 27th meeting and it states here that

14:45:41 20 Brinker received the resignation from Herron

14:45:46 21 effective July 30th. These dates kill me. I

14:45:58 22 don't know.

14:45:58 23 This is August 26th and he's

14:46:01 24 presented this at a Board meeting on the 26th

14:46:05 25 and it was effective as of July 30, so it was

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14:47:05 1 Q. You don't know one way or the

14:47:06 2 other?

14:47:07 3 A. I don't know one way or the

14:47:08 4 other --

14:47:09 5 Q. Okay.

14:47:09 6 A. -- because Ken would probably

14:47:12 7 be -- handle that.

14:47:16 8 Q. As a Board member, do you think

14:47:19 9 that his resignation should be disclosed to the

14:47:22 10 shareholders?

14:47:24 11 MR. BURKE: Objection. Calls for

14:47:24 12 speculation.

14:47:26 13 A. Not necessarily.

14:47:27 14 Q. Why not?

14:47:34 15 A. I don't know.

14:47:35 16 Q. Have I convinced you that Mr.

14:47:36 17 Herron was resigning in part in protest?

14:47:39 18 MR. BURKE: Objection.

14:47:41 19 A. According to what --

14:47:43 20 MR. BURKE: Objection.

14:47:44 21 Q. Please let him finish his answer.

14:47:47 22 MR. BURKE: Objection. You can

14:47:47 23 not convince him. That is an improper

14:47:50 24 question.

14:47:50 25 MR. BRAUTIGAM: Fine. If it's

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14:47:51 1 improper, it won't come into evidence.
 14:47:54 2 MR. BURKE: It is definitely
 14:47:54 3 improper.
 14:47:55 4 MR. BRAUTIGAM: Please continue
 14:47:55 5 your answer.
 14:47:56 6 MR. BURKE: Objection. Calls for
 14:47:57 7 speculation. Improper in form. You may
 14:47:59 8 answer.
 14:48:00 9 THE WITNESS: What was the
 14:48:00 10 question again?
 14:48:00 11 BY MR. BRAUTIGAM:
 14:48:02 12 Q. Okay. Having read part of Mr.
 14:48:04 13 Herron's testimony.
 14:48:05 14 A. Testimony.
 14:48:06 15 Q. Do you understand now that Mr.
 14:48:08 16 Herron resigned in part in protest against the
 14:48:11 17 Oak Hills and Provident merger?
 14:48:13 18 MR. BURKE: Objection.
 14:48:14 19 Mischaracterizes the record. Calls for
 14:48:16 20 speculation. You may answer.
 14:48:17 21 A. From what you have told me here
 14:48:21 22 today, I realize that, that it was in part.
 14:48:23 23 Q. Okay. Now, with this new
 14:48:24 24 information in mind, do you think that it would
 14:48:26 25 have been fair to say to the shareholders, hey,

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14:50:00 1 Zoellner, putting aside that document for a
 14:50:02 2 minute -- you can keep it in front of you.
 14:50:05 3 A. Okay.
 14:50:05 4 Q. You voted as a director to approve
 14:50:07 5 the merger with Provident, correct?
 14:50:09 6 A. Yes.
 14:50:09 7 Q. Okay. Please explain in basic
 14:50:11 8 terms how the merger was to work.
 14:50:17 9 MR. BURKE: Objection.
 14:50:35 10 A. I don't think I can answer that
 14:50:36 11 off the top of my head and be, and be accurate
 14:50:39 12 about it, because I really don't know. I can't
 14:50:41 13 answer that question.
 14:50:42 14 Q. Can you tell me even one component
 14:50:44 15 of the merger?
 14:50:47 16 MR. BURKE: Sitting here today?
 14:50:48 17 Q. Yes.
 14:50:48 18 MR. BURKE: Without the benefit of
 14:50:49 19 any documents? Okay.
 14:50:53 20 A. What was the question again?
 14:50:55 21 Q. Can you think of even one
 14:50:57 22 component of the merger that you voted as a
 14:50:59 23 director to approve?
 14:51:02 24 A. One reason that made me vote?
 14:51:06 25 Q. One component of how the

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14:48:32 1 when you consider this proposed merger, you
 14:48:35 2 should know that one of your directors resigned
 14:48:37 3 in part in protest after voting against
 14:48:41 4 continued negotiations with Provident?
 14:48:43 5 MR. BURKE: Objection.
 14:48:43 6 Foundation. Based upon what he was told today,
 14:48:46 7 he should go back two years? Objection to the
 14:48:49 8 form, misleading question. You may answer if
 14:48:51 9 you know.
 14:48:52 10 A. I don't know the answer to that.
 14:48:55 11 Q. Under what circumstances do you
 14:48:57 12 think the resignation of a director should be
 14:49:00 13 made public?
 14:49:01 14 MR. BURKE: Objection. Calls for
 14:49:02 15 a legal conclusion.
 14:49:08 16 A. Probably anything we would do, we
 14:49:10 17 would check with our legal people first on the
 14:49:13 18 proxy statement, whether this is all-inclusive
 14:49:16 19 or not.
 14:49:17 20 Q. Was that done in this case?
 14:49:19 21 A. I don't know. I do not know.
 14:49:21 22 Q. Who would know?
 14:49:22 23 A. I don't know.
 14:49:26 24 Q. Okay. Let's take a look at
 14:49:28 25 Zoellner Deposition Exhibit 21. Now, Mr.

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14:51:07 1 transaction worked.
 14:51:09 2 A. How the transaction worked. On
 14:51:17 3 a -- how much per share they were going to pay
 14:51:22 4 for the merger, how much you'd get returned.
 14:51:26 5 That was one component of the -- what -- what
 14:51:35 6 was discussed at the meeting.
 14:51:37 7 Q. Can you think of any other
 14:51:41 8 components of the merger?
 14:51:43 9 A. Of the merger? Well, one of them
 14:51:47 10 was -- we just read in here about taking care
 14:51:51 11 of the employees and management as far as the
 14:51:52 12 salary and that. I think that was in one of
 14:51:55 13 these minutes.
 14:51:58 14 Q. Are you talking about the change
 14:51:59 15 in control contracts that were limited to
 14:52:01 16 senior management?
 14:52:04 17 A. Not -- give me that again.
 14:52:14 18 Q. Were you talking about, in your
 14:52:15 19 previous answer, the change of control
 14:52:18 20 contracts, sometimes known as golden parachute
 14:52:25 21 contracts, that were limited to senior
 14:52:25 22 management?
 14:52:30 23 A. No, I'm not. No.
 14:52:33 24 Q. Okay. Mr. Zoellner, have you seen
 14:52:36 25 these September 24th, 1999 minutes of the OHSL

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14:52:40 1 Financial Corporation before?

14:52:41 2 A. I just looked at them here and I

14:52:42 3 was there, so I probably saw them.

14:52:46 4 Q. Okay. Are you familiar with the

14:52:46 5 phrase ten-day two-day average?

14:52:50 6 A. Ten-day two-day average, no, I'm

14:52:52 7 not.

14:52:54 8 Q. Okay. Do you think that that

14:52:55 9 phrase was somehow important to this merger

14:52:57 10 transaction?

14:52:58 11 MR. BURKE: Objection. Calls for

14:52:59 12 speculation.

14:53:00 13 A. I don't know.

14:53:09 14 Q. Okay. Please take a look at

14:53:09 15 Zoellner Deposition Exhibit 22.

14:53:09 16 (Brief recess.)

15:01:14 17 Q. Okay. Mr. Zoellner, I have handed

15:01:16 18 you what has been marked as Zoellner Deposition

15:01:18 19 Exhibit 22 and I ask you to take a look at it.

15:01:21 20 Have you seen that document before?

15:01:24 21 A. My name is on there, so I have.

15:01:27 22 Q. Now, this reflects the October

15:01:32 23 22nd, 1999 regular meeting of the Board of

15:01:35 24 Directors of OHSL Financial, correct?

15:01:38 25 A. Yes.

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15:02:33 1 everybody voted.

15:02:34 2 Q. Okay.

15:02:35 3 A. At the annual meeting there was --

15:02:37 4 there was just one vote. And they announced it

15:02:42 5 there that it passed.

15:02:43 6 Q. But Mr. Zoellner, not everyone

15:02:45 7 voted at the same time, correct?

15:02:48 8 A. Well, they -- they either sent in

15:02:50 9 proxy votes -- now, the way I remember it is

15:02:55 10 they either sent in proxy votes or they came to

15:02:57 11 the meeting and voted.

15:02:58 12 Q. Okay.

15:02:59 13 A. And then they counted the ballots

15:03:03 14 at the meeting and we gave the results right at

15:03:04 15 the meeting.

15:03:05 16 Q. Okay. What's a proxy vote?

15:03:06 17 A. What's a proxy vote? Somebody

15:03:08 18 voting that can't be there.

15:03:11 19 Q. Okay. And what happened in this

15:03:12 20 case if the person didn't return the proxy

15:03:14 21 card?

15:03:15 22 A. Then it didn't get voted. It

15:03:18 23 didn't have a vote.

15:03:20 24 Q. Didn't have a vote at all?

15:03:21 25 A. No. If he didn't return the proxy

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15:01:38 1 Q. And this was on a Friday, correct?

15:01:43 2 A. I don't know. Does it say it?

15:01:45 3 Q. Well, actually the Board

15:01:46 4 meeting -- excuse me. The special meeting of

15:01:49 5 shareholders to approve the transaction was

15:01:52 6 October 25th of 1999, and I believe that was a

15:01:55 7 Monday. Does that ring a bell?

15:01:57 8 MR. BURKE: Objection.

15:01:59 9 A. Those dates I don't know. I don't

15:02:01 10 remember any of those dates.

15:02:03 11 Q. Okay. Do you remember anything

15:02:04 12 about the actual shareholder vote?

15:02:06 13 A. Anything about it?

15:02:07 14 Q. Yes.

15:02:09 15 A. No, I wasn't involved in it. I

15:02:13 16 didn't count them or do a --

15:02:14 17 Q. Well, the Board received periodic

15:02:17 18 reports in some fashion, correct?

15:02:18 19 A. Of, of the vote?

15:02:23 20 Q. Yes.

15:02:24 21 A. No, there wasn't any periodic

15:02:25 22 report.

15:02:26 23 Q. So --

15:02:26 24 A. There was only one vote at the

15:02:31 25 special -- when we sent out the proxies and

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15:03:23 1 or show up and vote in person.

15:03:25 2 Q. Are you sure about that?

15:03:28 3 A. I don't know of any other way for

15:03:30 4 them to vote, either proxy or in person.

15:03:35 5 Q. Okay. And is it your testimony

15:03:36 6 that the Board of Directors never received a

15:03:37 7 report on how the voting was going, up to and

15:03:41 8 including the special meeting of October 25th,

15:03:44 9 1999?

15:03:46 10 A. How the voting was going? Do you

15:03:48 11 mean as far as compiling and counting proxy

15:03:53 12 votes?

15:03:54 13 Q. Yes.

15:03:54 14 A. That's the only thing that they

15:03:55 15 would have ahead of time.

15:03:57 16 Q. Yes. And did the Board ever

15:03:58 17 receive --

15:03:59 18 A. I don't remember ever getting a

15:04:01 19 report.

15:04:01 20 Q. Was that important to you?

15:04:02 21 MR. BURKE: That he didn't get

15:04:04 22 one?

15:04:04 23 A. No, no.

15:04:06 24 Q. That you got one or -- withdrawn.

15:04:07 25 Was it important to you as a director to know

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15:04:10 1 how the vote was going?
 15:04:12 2 A. Not ahead of time as in the
 15:04:16 3 mailed-in proxies.
 15:04:22 4 Q. Okay. Did you vote your personal
 15:04:23 5 shares?
 15:04:23 6 A. Yes.
 15:04:24 7 Q. How did you vote your personal
 15:04:25 8 shares?
 15:04:25 9 A. I voted when I got there at the
 15:04:27 10 meeting.
 15:04:28 11 Q. And how did you vote?
 15:04:30 12 A. I voted for it.
 15:04:33 13 Q. Okay. Did you ever tell anyone
 15:04:35 14 that you might vote against it?
 15:04:40 15 A. No.
 15:04:41 16 Q. Did you ever give anyone any
 15:04:43 17 reason to believe that you might vote
 15:04:46 18 against --
 15:04:47 19 MR. BURKE: Calls for speculation.
 15:04:48 20 Q. -- the transaction with respect to
 15:04:49 21 your personal shares?
 15:04:54 22 A. Oh, probably before, before I
 15:04:58 23 changed my mind and decided to vote for it. I,
 15:05:03 24 I could have said, well, I -- said if it's like
 15:05:09 25 this, then I would vote against it. But then

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15:06:18 1 A. Number five?
 15:06:19 2 Q. Page 352, line five.
 15:06:22 3 MR. BURKE: Why don't you read the
 15:06:23 4 page just so you can put it in context?
 15:06:26 5 Q. And Mr. Zoellner, let me just tell
 15:06:28 6 you what this is again. This is the deposition
 15:06:30 7 testimony of Ken Hanauer that was taken in the
 15:06:33 8 state court action which was previous to the
 15:06:35 9 Thiemann action, okay? And he was sitting in
 15:06:38 10 this room, I think in this chair, and I was
 15:06:41 11 asking him questions. So when -- have that in
 15:06:44 12 mind as you review the document.
 15:06:46 13 And on line five, I ask the
 15:06:48 14 question, Question: Do you believe that any
 15:06:51 15 other OHSL directors voted against the
 15:06:54 16 transaction as shareholders?
 15:06:56 17 And then Ken answers. Answer: I
 15:06:59 18 believe that is possible, yes, sir.
 15:07:01 19 Question: Whom do you believe it
 15:07:04 20 was possible with?
 15:07:06 21 Answer: Howard Zoellner I believe
 15:07:09 22 could have voted against the transaction.
 15:07:12 23 A. Um-hmm.
 15:07:13 24 Q. Question: And what is that
 15:07:14 25 opinion based on?

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15:05:13 1 when it was worked out the way that we thought
 15:05:15 2 it was right and I thought it was right, then I
 15:05:17 3 changed my vote to a vote for it.
 15:05:19 4 Q. And can you provide any details
 15:05:21 5 with respect to the way it was worked out as
 15:05:23 6 being right that you just --
 15:05:25 7 A. No, no, I can't.
 15:05:25 8 Q. Not even one?
 15:05:26 9 A. No.
 15:05:28 10 Q. Okay. Please take a look at the
 15:05:29 11 Hanauer testimony, whatever --
 15:05:32 12 A. This is it here, isn't it?
 15:05:35 13 Q. No, it's not.
 15:05:37 14 A. Oh, that's Herron.
 15:05:38 15 Q. Please just take a look at page
 15:05:40 16 352.
 15:05:44 17 MR. BURKE: Objection. Continuing
 15:05:44 18 objection to questioning this witness on an 800
 15:05:50 19 page document never seen before, based upon
 15:05:53 20 testimony he's never heard before. What was it
 15:06:00 21 again? I lost the page.
 15:06:00 22 Q. Page 352.
 15:06:00 23 MR. BURKE: Thank you. Okay.
 15:06:15 24 Q. Okay. Do you see line five, Mr.
 15:06:16 25 Zoellner?

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15:07:15 1 Answer: Again, casual
 15:07:17 2 conversations that we had during and after
 15:07:20 3 Board meetings and his feeling that he wanted
 15:07:22 4 the company to remain independent as well.
 15:07:26 5 Do you see that?
 15:07:26 6 A. Yes.
 15:07:27 7 Q. And you -- did you have
 15:07:28 8 conversations like that with Mr. Hanauer before
 15:07:31 9 and after Board meetings?
 15:07:34 10 MR. BURKE: Objection to form.
 15:07:35 11 A. Well, this goes back now. This
 15:07:37 12 goes way back before we had any idea of merging
 15:07:40 13 with anybody, when we were talking about it.
 15:07:43 14 We'd been talking about this for two or three
 15:07:45 15 years on a merger or a buy-out or, or that we
 15:07:51 16 -- and we investigated these things as they
 15:07:54 17 come up. And we voted for them or against,
 15:07:57 18 that we should continue on or not. And a lot
 15:08:00 19 of times I was on Ken's side, if you want to
 15:08:03 20 call it that. And other times I was against
 15:08:06 21 what Ken was doing.
 15:08:08 22 Q. But you were never against Ken
 15:08:10 23 until July 22nd, 1999, correct?
 15:08:14 24 MR. BURKE: Objection. Misstates
 15:08:15 25 prior testimony.

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15:08:16 1 A. No, because these were other
15:08:17 2 things that we were voting on, too.
15:08:19 3 Q. No, I meant with respect to the
15:08:20 4 proposed sale of OHSL.
15:08:23 5 MR. BURKE: Objection. Asked and
15:08:23 6 answered.
15:08:24 7 A. No. That isn't true. When we
15:08:28 8 decided to sell, I objected. I didn't want to.
15:08:33 9 No, that's not true.
15:08:36 10 Q. Okay. When --
15:08:37 11 A. When we got to getting to the
15:08:38 12 agreement, I already had made up my mind that's
15:08:41 13 the way to go.
15:08:42 14 Q. When did the Board decide to sell?
15:08:45 15 A. When did they decide to sell?
15:08:47 16 Gee, that was in the minutes there and I'd have
15:08:49 17 to go back and look.
15:08:51 18 Q. What did it say specifically in
15:08:53 19 the minutes?
15:08:54 20 MR. BURKE: Objection. I mean the
15:08:55 21 documents speak for themselves. You've gone
15:08:57 22 over them minute by minute. To ask him to
15:09:01 23 recall what one says is improper. You may
15:09:03 24 answer.
15:09:04 25 A. It's in the minutes and I'd have

15:09:06 1 to find it in the minutes.
15:09:08 2 Q. Okay. Do you remember a specific
15:09:08 3 phrase or something that you could clue me in
15:09:11 4 to?
15:09:11 5 A. No.
15:09:12 6 Q. But you remember that there's
15:09:13 7 something in the minutes that says that the
15:09:14 8 company was for sale? Is that your testimony?
15:09:18 9 MR. BURKE: Objection. No, that's
15:09:19 10 not what the question was.
15:09:20 11 A. No, you were talking about my
15:09:21 12 voting against it with Ken Hanauer. I thought
15:09:25 13 I was answering this question here.
15:09:26 14 Q. I think we're a little confused
15:09:28 15 here. Okay. Does the number 3660 mean
15:09:34 16 anything to you with respect to this
15:09:36 17 transaction?
15:09:37 18 A. 3660?
15:09:38 19 MR. BURKE: Objection to the form.
15:09:39 20 A. No, it doesn't mean anything to
15:09:41 21 me.
15:09:42 22 Q. Does the number 40 mean anything
15:09:44 23 to you with respect to this transaction?
15:09:46 24 MR. BURKE: Objection to form.
15:09:47 25 A. No, doesn't mean anything.

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15:09:59 1 Q. Please take a look at Zoellner
15:10:02 2 Deposition Exhibit 23.
15:10:09 3 MR. BURKE: Again we have an
15:10:12 4 incomplete document.
15:10:17 5 MR. BRAUTIGAM: Okay. I'll fix
15:10:18 6 that in one second.
15:10:18 7 (Discussion off the record.)
15:11:20 8 BY MR. BRAUTIGAM:
15:11:25 9 Q. Mr. Zoellner, before the special
15:11:27 10 meeting, the week of October 18th through
15:11:30 11 October 25th, did you ever hear that Mr. Huckle
15:11:34 12 had taking any unusual action with respect to
15:11:37 13 the voting?
15:11:42 14 MR. BURKE: Objection to
15:11:42 15 relevance.
15:11:43 16 A. Any unusual action in September
15:11:47 17 with the voting?
15:11:48 18 Q. No, from October 18th to October
15:11:51 19 25th of 1999.
15:11:55 20 A. I do not know of any unusual
15:11:58 21 action by Al Huckle.
15:12:01 22 Q. Okay. Would that answer be true
15:12:03 23 if I opened it up -- did you ever hear of Mr.
15:12:07 24 Huckle taken any unusual action with respect to
15:12:09 25 the voting?

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15:12:10 1 MR. BURKE: Objection to form.
15:12:12 2 A. No.
15:12:17 3 Q. Okay. Is it your testimony that
15:12:18 4 you were not following the voting at all prior
15:12:21 5 to October 25th, and when you showed up at the
15:12:24 6 meeting you just figured they'd tell you what
15:12:27 7 happened? Is that right?
15:12:29 8 MR. BURKE: Objection. Asked and
15:12:29 9 answered.
15:12:30 10 A. No. I said that the proxies were
15:12:31 11 mailed in and this is what you just gave me. I
15:12:34 12 glanced down and saw where the proxies were
15:12:37 13 brought along, the others. Ken Hanauer asked
15:12:40 14 that the other proxies be given to the
15:12:46 15 secretary and then the votes were done there.
15:12:47 16 Q. How many shares did you vote?
15:12:50 17 A. Oh, probably 3500, 3400.
15:12:53 18 Q. And why did you wait to vote at
15:12:56 19 the special meeting?
15:12:57 20 A. Because I knew I was going to be
15:12:59 21 there. I'd vote there rather than send the
15:13:02 22 proxy in. If I wasn't going to attend the
15:13:08 23 meeting, then I would have mailed it in.
15:13:11 24 Q. Do you remember anything at all
15:13:12 25 about the October 25th, 1999 special

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15:13:14 1 stockholder meeting?
 15:13:19 2 A. I do not. I'd have to read it. I
 15:13:22 3 don't know of anything special.
 15:13:24 4 Q. No, no, I'm not asking you to read
 15:13:25 5 it. I'm asking you as you sit here today, do
 15:13:28 6 you recall anything about the meeting?
 15:13:33 7 A. Not that I can think of, no.
 15:13:44 8 Q. It says here in the third
 15:13:46 9 paragraph that the president, meaning Mr.
 15:13:52 10 Hanauer, introduced the directors. Do you see
 15:13:54 11 that --
 15:13:55 12 A. Yes --
 15:13:56 13 Q. -- in the third paragraph? And do
 15:13:57 14 you recall anything being said one way or the
 15:13:59 15 other about Mr. Herron?
 15:14:03 16 A. I don't remember anything. If he
 15:14:06 17 did or if he didn't, I don't remember that.
 15:14:10 18 Q. Okay. Do you think that he should
 15:14:11 19 have said something to the effect that Mr.
 15:14:13 20 Herron was no longer a director?
 15:14:15 21 MR. BURKE: Objection. Calls for
 15:14:16 22 speculation.
 15:14:18 23 A. That would be my opinion. And
 15:14:22 24 under those circumstances and everything, I
 15:14:25 25 don't think it was necessary. That's just an

15:14:27 1 opinion.
 15:14:28 2 Q. Your opinion is what, that he
 15:14:29 3 should have or should not have?
 15:14:31 4 A. It wasn't necessary for him to
 15:14:33 5 make any mention, but I -- now that I'm talking
 15:14:36 6 about it, he might have said it. Ken Hanauer
 15:14:40 7 might have mentioned it. I don't know.
 15:14:42 8 Q. Were there any questions about Mr.
 15:14:43 9 Herron's resignation?
 15:14:45 10 A. No. Not that I know of.
 15:14:46 11 Q. Okay. The very last paragraph on
 15:14:50 12 page one says "President Hanauer read from a
 15:14:54 13 script prepared by counsel, outlining a few of
 15:14:57 14 the highlights of the transaction." Do you see
 15:14:58 15 that?
 15:14:59 16 A. Yes.
 15:15:00 17 Q. Do you remember anything about
 15:15:01 18 that reading?
 15:15:03 19 A. No, I don't.
 15:15:05 20 MR. BRAUTIGAM: Evidently,
 15:15:06 21 counsel, I have not received that. We can't
 15:15:08 22 close the deposition until we get it. I wrote
 15:15:11 23 Mr. Hust a letter and hopefully you guys will
 15:15:13 24 get back to me.
 15:15:15 25 Q. Flipping over the page, it talks

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15:15:17 1 about a question and answer session. Do you
 15:15:19 2 remember anything about those questions and
 15:15:21 3 answers?
 15:15:24 4 A. I do not remember anything.
 15:15:26 5 Q. Okay. Let's take a look at what's
 15:15:29 6 been marked as Herron Deposition Exhibit 2.
 15:15:46 7 Okay. Do you see some handwriting on this
 15:15:48 8 document?
 15:15:52 9 A. Yes.
 15:15:53 10 Q. Let me represent to you that that
 15:15:55 11 looks like -- that is Ken Hanauer's
 15:15:58 12 handwriting. Does that look familiar to you?
 15:16:00 13 MR. BURKE: Objection.
 15:16:01 14 A. No, I don't know. I don't know
 15:16:02 15 his handwriting.
 15:16:08 16 Q. Okay. Were you aware that Mr.
 15:16:09 17 Hanauer had serious reservations with respect
 15:16:12 18 to the accuracy of the proxy materials?
 15:16:15 19 MR. BURKE: Objection.
 15:16:16 20 Mischaracterizes the record, assumes facts not
 15:16:19 21 in evidence. That's an incorrect statement,
 15:16:21 22 counsel. Object to the form. You can answer.
 15:16:27 23 A. I don't know anything about that.
 15:16:28 24 Q. Were you aware that Mr. Hanauer
 15:16:31 25 directed that his signature be removed from the

15:16:34 1 document?
 15:16:35 2 MR. BURKE: Objection.
 15:16:36 3 Mischaracterizes the record.
 15:16:38 4 A. No, I didn't know anything about
 15:16:39 5 that.
 15:16:40 6 Q. If that's true, would that bother
 15:16:42 7 you in any way?
 15:16:43 8 MR. BURKE: Objection. You don't
 15:16:44 9 have to assume that, Mr. Zoellner.
 15:16:47 10 A. I don't know. I'd hate to make a
 15:16:49 11 judgment on that now when it is irrelevant, not
 15:16:56 12 to make a judgment on whether he should have
 15:16:58 13 done something or he shouldn't have. I can't
 15:17:00 14 say that. I can't answer it, I don't know.
 15:17:02 15 Q. Mr. Zoellner, you used the word
 15:17:04 16 "irrelevant" in your previous answer. Why did
 15:17:06 17 you choose that word?
 15:17:08 18 A. I don't know. I couldn't think of
 15:17:10 19 any other one.
 15:17:12 20 Q. Okay. You understand that at
 15:17:12 21 least some of the things that we're talking
 15:17:14 22 about today might be very relevant for a jury
 15:17:17 23 that decides --
 15:17:18 24 MR. BURKE: Objection,
 15:17:19 25 argumentative.

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15:17:19 1 Q. -- your culpability and that of
 15:17:21 2 Mr. Hanauer and that of the other defendants?
 15:17:25 3 MR. BURKE: Objection.
 15:17:26 4 Q. Do you understand that?
 15:17:27 5 MR. BURKE: Objection.
 15:17:27 6 A. Yeah.
 15:17:31 7 Q. Okay. Let's take a look at the
 15:17:32 8 first page of this document. Having been
 15:17:40 9 through this discussion with me today, do you
 15:17:44 10 believe that the sentence, "Your Board of
 15:17:47 11 Directors unanimously approved the acquisition
 15:17:50 12 and believes that it is in the best interest of
 15:17:52 13 OHSL shareholders," is accurate?
 15:17:56 14 MR. BURKE: Objection. Asked and
 15:17:57 15 answered numerous times.
 15:18:02 16 A. Do I answer?
 15:18:03 17 MR. BURKE: Yes. Yes.
 15:18:04 18 A. We've discussed that two or three
 15:18:06 19 times and it's all according to unanimous, the
 15:18:18 20 definition of it again. One's all the
 15:18:23 21 directors present at the time or that -- answer
 15:18:28 22 me that question again, I might have got off a
 15:18:31 23 little bit on that.
 15:18:32 24 Q. Okay. Let me ask a slightly
 15:18:34 25 different question. That sentence has two

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15:19:32 1 Q. My question is completely
 15:19:33 2 different. It actually goes to sentence
 15:19:35 3 construction and English.
 15:19:37 4 A. English?
 15:19:39 5 Q. Right.
 15:19:39 6 A. I always got a D in that.
 15:19:41 7 Q. Well, what can I tell you? Do you
 15:19:46 8 agree that that sentence has two components?
 15:19:49 9 MR. BURKE: Objection to relevance
 15:19:49 10 and the form. Argumentative. You can answer.
 15:20:03 11 Q. Mr. Zoellner?
 15:20:05 12 A. Yeah. Well, we're back again to
 15:20:07 13 the unanimous.
 15:20:08 14 Q. No, no, we're not on unanimous.
 15:20:10 15 A. Okay.
 15:20:10 16 Q. We're on two components to the
 15:20:12 17 sentence.
 15:20:13 18 A. Two components is -- well, one of
 15:20:17 19 them is talking about unanimous and the other
 15:20:19 20 one is talking about believes it is in the best
 15:20:22 21 interest of OHSL. There are two different
 15:20:26 22 thoughts there.
 15:20:26 23 Q. Right. That's exactly my point.
 15:20:28 24 And both thoughts reference unanimity by the
 15:20:33 25 OHSL Board of Directors, correct?

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15:18:38 1 components, would you agree with that? "Your
 15:18:40 2 Board of Directors unanimously approved the
 15:18:42 3 acquisition," stop. And then the second
 15:18:44 4 component, "and believes that it is in the best
 15:18:47 5 interest of OHSL stockholders." Do you see
 15:18:49 6 that? Do you agree that there are two
 15:18:52 7 components?
 15:18:52 8 MR. BURKE: Objection. The
 15:19:00 9 document speaks for itself.
 15:19:00 10 A. I'd -- I don't know what you're
 15:19:00 11 referring to.
 15:19:00 12 Q. Well, I'm referring to this
 15:19:02 13 sentence right here, "Your Board of Directors
 15:19:04 14 unanimously approved the acquisition and
 15:19:06 15 believes that it is in the best interest of
 15:19:08 16 OHSL stockholders."
 15:19:11 17 A. Yes.
 15:19:12 18 Q. Does that sentence have two
 15:19:14 19 components?
 15:19:15 20 MR. BURKE: Objection to form,
 15:19:16 21 relevance. Document speaks for itself. You
 15:19:20 22 may answer.
 15:19:22 23 A. I, I agree that it's the same
 15:19:26 24 thing, that the document tells you what it is
 15:19:28 25 here, and that's all I have to go by.

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15:20:35 1 MR. BURKE: Objection. Calls for
 15:20:36 2 speculation. You may answer.
 15:20:47 3 A. Now I lost my place. We are --
 15:20:50 4 MR. BURKE: Right there.
 15:20:54 5 A. What was the question again?
 15:20:57 6 Q. Both components of that sentence
 15:20:59 7 refer to unanimity, correct?
 15:21:02 8 MR. BURKE: Objection. The
 15:21:02 9 document speaks for itself. You can answer.
 15:21:05 10 A. Well, I think it approved the
 15:21:07 11 acquisition and believes that it is in the best
 15:21:09 12 interest -- well, it could. It's a matter of
 15:21:12 13 interpretation again.
 15:21:13 14 Q. Well, actually there's no other
 15:21:15 15 fair reading; isn't that correct?
 15:21:17 16 MR. BURKE: Objection.
 15:21:18 17 A. Okay.
 15:21:20 18 MR. BURKE: Okay. Wait a
 15:21:21 19 minute -- now, wait a minute. That's improper
 15:21:23 20 for you to instruct this witness and Mr.
 15:21:26 21 Zoellner to say okay, based on a directive from
 15:21:29 22 you.
 15:21:30 23 MR. BRAUTIGAM: Jim, I didn't
 15:21:31 24 instruct him.
 15:21:31 25 MR. BURKE: Yes, you did, Michael.

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15:21:33 1 That's improper. This gentleman basically
 15:21:35 2 agreed with you. He was not answering a
 15:21:37 3 question. You mandated a statement that was
 15:21:39 4 not a question at all and he was saying okay.
 15:21:42 5 MR. BRAUTIGAM: Jim, we really
 15:21:43 6 don't need your speaking objections. The
 15:21:46 7 record is fine and --
 15:21:47 8 MR. BURKE: That's improper
 15:21:48 9 testimony. That's an improper question.
 15:21:50 10 That's fine.
 15:21:52 11 MR. BRAUTIGAM: Jim, you don't
 15:21:53 12 need to make speaking objections. We're going
 15:21:55 13 along swimmingly.
 15:21:57 14 MR. BURKE: Move to strike. Mr.
 15:21:57 15 Zoellner --
 15:21:59 16 MR. BRAUTIGAM: Jim, it's my turn.
 15:22:01 17 MR. BURKE: Mr. Zoellner, tell me
 15:22:02 18 what -- were you just agreeing with Mr.
 15:22:05 19 Brautigam in that last question and answer?
 15:22:08 20 MR. BRAUTIGAM: Objection.
 15:22:09 21 THE WITNESS: Yes, and it's --
 15:22:13 22 yes, I disagreed with it.
 15:22:13 23 BY MR. BRAUTIGAM:
 15:22:17 24 Q. Mr. Zoellner, are you done with
 15:22:19 25 your answer?

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15:23:10 1 answer previously read about which you
 15:23:12 2 interrogated already today; am I correct?
 15:23:15 3 MR. BRAUTIGAM: No, this is
 15:23:16 4 completely different.
 15:23:17 5 MR. BURKE: Okay.
 15:23:19 6 MR. BRAUTIGAM: Feel free to
 15:23:20 7 fantasize at any time as to --
 15:23:22 8 MR. BURKE: I don't fantasize, Mr.
 15:23:23 9 Brautigam. That's an unnecessary comment, but
 15:23:26 10 that's okay.
 15:23:26 11 MR. BRAUTIGAM: Jim, your comments
 15:23:28 12 are unnecessary, too. Okay.
 15:23:30 13 MR. BURKE: Okay.
 15:23:30 14 MR. BRAUTIGAM: If you would pay
 15:23:31 15 attention and you would listen to the
 15:23:32 16 questions, you would realize that we are doing
 15:23:34 17 just fine without your --
 15:23:36 18 MR. BURKE: People who are
 15:23:37 19 admitted to the Ohio Bar don't take depositions
 15:23:41 20 like that. I think if you're going to be a
 15:23:43 21 member pro hac vice of this bar, you ought to
 15:23:46 22 conduct yourself in a way that is consistent
 15:23:49 23 with practice in this region.
 15:23:49 24 BY MR. BRAUTIGAM:
 15:23:51 25 Q. Mr. Zoellner, are you keyed into

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15:22:19 1 A. Yes.
 15:22:20 2 Q. Didn't you just say a minute ago
 15:22:21 3 you agreed with it, now you're disagreeing with
 15:22:24 4 it?
 15:22:25 5 A. Well, we're getting confused here.
 15:22:28 6 Too many different -- maybe we ought to start
 15:22:30 7 over.
 15:22:31 8 MR. BURKE: That's fair.
 15:22:32 9 Q. Let me do something else, Mr.
 15:22:33 10 Zoellner. Please take a look at Zoellner
 15:22:35 11 Deposition Exhibit 2, this is the testimony of
 15:22:37 12 Ken Hanauer, and let me direct your attention
 15:22:40 13 to page 29. Do you see that, sir?
 15:22:45 14 MR. BURKE: Continuing objection
 15:22:45 15 to making this witness answer questions on
 15:22:48 16 testimony he's not read in its entirety and
 15:22:51 17 taken out of context. Page 29?
 15:22:55 18 A. Oh, it's already there. Where did
 15:22:57 19 I get the 28? Oh, I was going by eight down
 15:23:01 20 here.
 15:23:01 21 Q. Now, Mr. Zoellner let me just key
 15:23:03 22 you in on this. This is testimony given by Ken
 15:23:05 23 Hanauer in the previous state court action,
 15:23:08 24 okay?
 15:23:09 25 MR. BURKE: This is a question and

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15:23:53 1 this now? This is Mr. Hanauer's testimony in a
 15:23:56 2 previous action, okay?
 15:23:58 3 A. Okay.
 15:23:58 4 Q. And when it says question, that's
 15:23:59 5 me asking Mr. Hanauer a question. And when it
 15:24:07 6 says answer, that's Mr. Hanauer answering. Do
 15:24:07 7 you see that?
 15:24:07 8 A. Yes.
 15:24:07 9 Q. Okay. And on page 29 and line
 15:24:10 10 two, I ask: Question: On or about September
 15:24:14 11 24th, 1999, when this transaction was being
 15:24:17 12 proposed to the shareholders, your testimony is
 15:24:20 13 you did not believe that it was in the best
 15:24:23 14 interest of Oak Hills' shareholders, correct?
 15:24:27 15 Answer: That's correct.
 15:24:29 16 Question: And I'm asking you --
 15:24:31 17 well, was your opinion that you did not believe
 15:24:33 18 this transaction was in the best interest of
 15:24:36 19 Oak Hills shareholders, disclosed in this
 15:24:38 20 document?
 15:24:39 21 And Mr. Hanauer answers: No, sir,
 15:24:43 22 I don't believe it was.
 15:24:45 23 Now --
 15:24:47 24 MR. BURKE: I would ask him to
 15:24:48 25 continue to read so he can put in this context,

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15:24:51 1 Mr. Brautigam.
 15:24:55 2 Q. Okay. Question: Was it disclosed
 15:24:58 3 anywhere?
 15:24:58 4 Answer: It was disclosed -- well,
 15:25:01 5 the term disclosed is a misnomer, I guess. It
 15:25:05 6 was recorded in the corporate minutes of the
 15:25:07 7 organization.
 15:25:08 8 Question: Well, let's limit the
 15:25:10 9 question to disclosed to the public
 15:25:12 10 shareholders.
 15:25:13 11 Answer: No, sir, I don't believe
 15:25:17 12 it was.
 15:25:18 13 MR. BURKE: Please continue.
 15:25:19 14 MR. BRAUTIGAM: No, no, I'm done.
 15:25:21 15 MR. BURKE: Then I'd like to have
 15:25:22 16 my witness continue --
 15:25:23 17 MR. BRAUTIGAM: Jim, wait a
 15:25:24 18 minute.
 15:25:24 19 MR. BURKE: Wait a minute, Mr.
 15:25:25 20 Brautigam.
 15:25:25 21 MR. BRAUTIGAM: You can ask him
 15:25:26 22 whatever you want.
 15:25:27 23 MR. BURKE: This witness is being
 15:25:28 24 asked to read from a deposition he's never seen
 15:25:30 25 before. You're giving him an excerpt out of

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15:29:27 1 MR. BURKE: Objection.
 15:29:28 2 MR. MOORE: Objection.
 15:29:30 3 MR. BURKE: Mischaracterizes the
 15:29:30 4 record. Mischaracterizes the transcript we're
 15:29:32 5 looking at.
 15:29:32 6 A. This is what he's saying, but I
 15:29:35 7 don't know whether that's true or not.
 15:29:37 8 Q. Okay. This is Mr. Hanauer's
 15:29:38 9 testimony under oath. Do you understand that?
 15:29:40 10 A. Yeah.
 15:29:41 11 Q. Do you think that Mr. Hanauer is a
 15:29:42 12 liar?
 15:29:44 13 MR. BURKE: Objection.
 15:29:45 14 A. No, no.
 15:29:46 15 Q. Do you have reason to believe that
 15:29:47 16 Mr. Hanauer would testify falsely under oath?
 15:29:51 17 MR. BURKE: Objection. Relevance,
 15:29:52 18 argumentative.
 15:29:53 19 A. No. I don't think he would.
 15:29:54 20 Q. So you think that his testimony is
 15:29:56 21 true?
 15:29:57 22 A. That is correct, yes.
 15:29:59 23 Q. Okay. Accepting that for a
 15:30:00 24 moment, do you believe that the sentence we're
 15:30:02 25 talking about is, therefore, inaccurate?

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15:25:33 1 context and I want him to continue to read the
 15:25:36 2 next page and a half so he can put it in
 15:25:38 3 context. You don't have to read it into the
 15:25:41 4 record, but I'm going to ask him to take the
 15:25:44 5 opportunity to do that.
 15:25:45 6 MR. BRAUTIGAM: Jim, I said at the
 15:25:46 7 beginning that he can take as much time as he
 15:25:47 8 needs with any document. It's a standing
 15:25:49 9 instruction.
 15:25:50 10 MR. BURKE: All right. Keep
 15:27:23 11 going.
 15:27:24 12 THE WITNESS: This is a lot for me
 15:27:25 13 to remember.
 15:27:26 14 MR. BURKE: I understand. I just
 15:27:27 15 want you to be able to put it in context.
 15:27:59 16 THE WITNESS: Do you just want
 15:27:59 17 halfway down?
 15:28:01 18 MR. BURKE: Just read it to right
 15:28:02 19 here and then we'll stop there. That's enough.
 15:28:58 20 THE WITNESS: Oh, okay.
 15:29:00 21 BY MR. BRAUTIGAM:
 15:29:18 22 Q. Mr. Zoellner, do you now
 15:29:19 23 understand that Mr. Hanauer never believed that
 15:29:22 24 this merger was in the best interest of OHSL
 15:29:26 25 stockholders?

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15:30:06 1 MR. BURKE: Objection.
 15:30:06 2 MR. MOORE: Objection.
 15:30:07 3 MR. BURKE: Calls for speculation.
 15:30:08 4 A. Which sentence?
 15:30:09 5 Q. "Your Board of Directors
 15:30:09 6 unanimously approved the acquisition and
 15:30:12 7 believes that it is in the best interest of
 15:30:14 8 OHSL stockholders."
 15:30:17 9 MR. BURKE: Objection.
 15:30:17 10 Mischaracterizes the record.
 15:30:21 11 A. That wasn't on here, was it?
 15:30:27 12 Q. Here, it's right here. This is
 15:30:29 13 the proxy material.
 15:30:30 14 A. That's what we're talking about,
 15:30:31 15 not this one here?
 15:30:32 16 Q. Correct, correct.
 15:30:33 17 A. Okay.
 15:30:35 18 Q. Let's get this then. Mr.
 15:30:44 19 Zoellner, would it be helpful to you if I
 15:30:47 20 highlighted that sentence in yellow?
 15:30:49 21 A. I've got it now. I've got my
 15:30:50 22 finger on it.
 15:30:51 23 Q. Okay.
 15:30:52 24 A. Well, I did have it. That right
 15:30:54 25 there, unanimously. This is his testimony?

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15:30:58 1 Q. No, that's the proxy material.
 15:31:00 2 A. Oh, that's the proxy material.
 15:31:07 3 Q. And my question is --
 15:31:09 4 A. And this one says that it's
 15:31:10 5 unanimous and this says that he didn't, right?
 15:31:13 6 Q. Yes.
 15:31:14 7 MR. BURKE: Objection.
 15:31:14 8 Q. That's my point.
 15:31:15 9 MR. BURKE: Mischaracterizes the
 15:31:16 10 document.
 15:31:19 11 Q. Can you reconcile those two
 15:31:22 12 concepts for me, please?
 15:31:23 13 MR. BURKE: Objection. Calls for
 15:31:24 14 speculation. You may answer.
 15:31:25 15 A. No, I can't. I can't.
 15:31:30 16 Q. Do you think, knowing what you
 15:31:31 17 know now, that Mr. Hanauer's belief as a Board
 15:31:35 18 member and as the CEO of OHSL, that his belief
 15:31:42 19 that he did not believe it was in the best
 15:31:44 20 interest of OHSL stockholders should have been
 15:31:47 21 disclosed to the shareholders?
 15:31:49 22 MR. BURKE: Objection.
 15:31:49 23 Mischaracterizes the record. Calls for a legal
 15:31:52 24 conclusion. You may answer.
 15:31:55 25 A. Well, I don't think he ever came

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15:33:14 1 of it at all, where he was earlier, he was
 15:33:21 2 against it.
 15:33:22 3 Q. Mister --
 15:33:24 4 MR. BURKE: Please let the witness
 15:33:25 5 finish.
 15:33:26 6 Q. I thought he was finished, Jim.
 15:33:28 7 A. I'm sorry.
 15:33:30 8 MR. BURKE: No, he's not.
 15:33:32 9 Q. Mr. Zoellner, are you finished
 15:33:34 10 with your answer?
 15:33:35 11 MR. BURKE: You interrupted him
 15:33:36 12 again. Please finish your answer.
 15:33:38 13 Q. Mr. Zoellner, let me just state
 15:33:40 14 generally that I don't mean to interrupt you.
 15:33:42 15 And if you can indicate in some way if you want
 15:33:44 16 to continue speaking, please do it. I don't
 15:33:46 17 want to interrupt you, I'm just having trouble
 15:33:50 18 picking up when you're stopping and when you're
 15:33:52 19 continuing. I don't mean any respect and I
 15:33:54 20 don't mean to interrupt you.
 15:33:56 21 MR. BURKE: Let's start again.
 15:33:57 22 Can we pick up the answer?
 15:33:59 23 MR. BRAUTIGAM: Okay. Can you
 15:33:59 24 read the question and answer back, please?
 15:33:59 25 (Record read by Reporter.)

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15:31:58 1 out and said that he was completely against it,
 15:32:02 2 so there wouldn't be any reason to disclose it.
 15:32:07 3 Q. Did you ever ask him?
 15:32:09 4 A. No.
 15:32:11 5 Q. You said "completely against it."
 15:32:12 6 Did he come out and tell --
 15:32:14 7 A. Well, I mean when they're saying
 15:32:16 8 here that -- I'm sorry, go ahead.
 15:32:22 9 Q. You used the phrase "completely
 15:32:29 10 against it" in your previous answer.
 15:32:29 11 A. Um-hmm.
 15:32:29 12 Q. Did Mr. Hanauer ever lead you to
 15:32:30 13 believe that he was partially against it or
 15:32:32 14 almost completely against it or something like
 15:32:34 15 that?
 15:32:35 16 MR. BURKE: Objection to form.
 15:32:36 17 What's "it"?
 15:32:37 18 Q. As he used it in the previous
 15:32:39 19 answer.
 15:32:40 20 MR. BURKE: Objection to form.
 15:32:52 21 A. He has at one time or another, was
 15:32:56 22 against it the same as Tom Herron and myself,
 15:32:59 23 where -- which we talked about earlier. So
 15:33:04 24 it's all according to what time this was
 15:33:10 25 referring to, when he said he wasn't in favor

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15:34:49 1 Q. Okay. You referenced Mr. Hanauer
 15:34:53 2 being against it along with you and Mr.
 15:34:56 3 Zoellner in your previous answer. Do you
 15:34:58 4 remember that?
 15:35:00 5 A. Mr. Hanauer -- Herron?
 15:35:05 6 Q. Right.
 15:35:05 7 A. You said you and Mister --
 15:35:07 8 MR. BURKE: Zoellner.
 15:35:08 9 A. Zoellner. You meant Herron,
 15:35:10 10 didn't you?
 15:35:12 11 Q. Okay. I guess I meant Mr. Herron.
 15:35:13 12 A. Yeah. Well, I --
 15:35:16 13 MR. BURKE: Objection to form.
 15:35:17 14 You may answer.
 15:35:19 15 A. Well, it shows in the minutes that
 15:35:21 16 the three of us were against it at one time or
 15:35:23 17 another until it worked out where it was the
 15:35:26 18 best for the stockholders, then our minds
 15:35:29 19 changed.
 15:35:32 20 Q. Okay. Mr. Herron's mind didn't
 15:35:33 21 change, correct?
 15:35:35 22 A. I didn't know whether it did or
 15:35:36 23 didn't until I read -- and I've heard of his
 15:35:41 24 resignation and also that he was against it.
 15:35:45 25 That was part of his resignation, which I

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15:35:49 1 didn't know was that strong as I've learned
 15:35:51 2 today -- that he was against it that strong.
 15:35:58 3 Q. Okay. And with respect to Mr.
 15:35:59 4 Hanauer, his mind didn't change, either, did
 15:36:02 5 it?
 15:36:03 6 MR. BURKE: Objection.
 15:36:04 7 Mischaracterizes the record and the documents.
 15:36:06 8 A. Yeah. He was in favor of it at
 15:36:07 9 one time or another and he was against it
 15:36:10 10 another time.
 15:36:11 11 Q. Okay. When was Mr. Hanauer in
 15:36:13 12 favor of --
 15:36:14 13 A. I do not know the dates.
 15:36:17 14 Q. Okay. Let's take a look at
 15:36:19 15 Zoellner Deposition Exhibit 2. And if you
 15:36:22 16 could turn to page 764.
 15:36:26 17 MR. BURKE: Continuing objection
 15:36:26 18 to cross-examining a witness with a deposition
 15:36:30 19 that he has never read and is being taken out
 15:36:34 20 of context. Page 764?
 15:36:36 21 MR. BRAUTIGAM: Yes. It's the
 15:37:00 22 fourth session, if that helps.
 15:37:03 23 MR. BURKE: Okay.
 15:37:10 24 Q. If I would direct your attention
 15:37:11 25 to line six. Okay. Mr. Zoellner, if I can

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15:38:23 1 characterization.
 15:38:24 2 A. Not to his --
 15:38:25 3 MR. BURKE: Objection to the
 15:38:26 4 characterization of his true feelings. And you
 15:38:28 5 don't have to accept his characterization of
 15:38:30 6 what he is saying. You may answer, Mr.
 15:38:32 7 Zoellner.
 15:38:34 8 A. I forgot what I was going to say.
 15:38:38 9 MR. BURKE: Would you read the
 15:38:39 10 question back? Mr. Zoellner, there are 800
 15:38:41 11 pages of testimony here. There's a lot of
 15:38:43 12 things he's not showing you and that's all --
 15:38:45 13 you do not have to accept his characterization
 15:38:48 14 of what Mr. Hanauer said. So with that you can
 15:38:51 15 answer the question back.
 15:38:51 16 (Record read by Reporter.)
 15:39:14 17 A. The true feelings that he was
 15:39:16 18 against the merger?
 15:39:17 19 Q. That he just gave up.
 15:39:19 20 A. That he gave up. No, I didn't
 15:39:25 21 know that.
 15:39:25 22 Q. Did you ever ask him?
 15:39:25 23 MR. BURKE: Ask him?
 15:39:25 24 A. Whether he gave up or not, no.
 15:39:27 25 Q. Why not?

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15:37:15 1 just focus you on this, this is the deposition
 15:37:19 2 testimony of Ken Hanauer in the previous state
 15:37:22 3 court action. I'm asking the questions and
 15:37:24 4 he's giving the answers. And let me just go
 15:37:27 5 through one of these questions.
 15:37:29 6 Question: Okay. Why did you
 15:37:31 7 change your vote from abstaining on July 22nd,
 15:37:35 8 to in favor of on August 2nd, 1999?
 15:37:40 9 Answer by Ken Hanauer: We had, we
 15:37:43 10 had discussed the ramifications of dissenting
 15:37:46 11 votes when we came to publication. And for the
 15:37:48 12 benefit of the -- it was the opinion of certain
 15:37:51 13 individuals that if you had a dissenting vote,
 15:37:54 14 that could carry some distinct ramifications
 15:37:56 15 that might, in fact, cause difficulties down
 15:37:59 16 the road in the transaction. So, so in
 15:38:01 17 essence, I just gave up. I felt as the last
 15:38:06 18 ditch effort on July 22nd, I would, I would
 15:38:08 19 vote -- or I would abstain from the vote. And
 15:38:10 20 by August 2nd, I just gave in and I voted for
 15:38:14 21 the transaction.
 15:38:15 22 Okay. Did you know that that was
 15:38:19 23 Mr. Hanauer's true feelings on or about August
 15:38:21 24 2nd, 1999?
 15:38:23 25 MR. BURKE: Objection to the

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15:39:28 1 A. Why would I?
 15:39:29 2 Q. Well, because --
 15:39:31 3 A. I mean, I didn't know he changed
 15:39:32 4 his vote really until you told me today.
 15:39:36 5 Q. You didn't know he changed his
 15:39:37 6 vote?
 15:39:38 7 A. No. If I did, I forgot it. I
 15:39:42 8 don't remember.
 15:39:44 9 Q. Okay. Mr. Zoellner, do you
 15:39:45 10 remember any Board meetings where the
 15:39:46 11 ramifications of dissenting votes were
 15:39:50 12 discussed?
 15:40:02 13 A. I can't recall when it was, but I,
 15:40:05 14 I -- we just had the minutes here that the
 15:40:09 15 three of us that voted against it earlier in
 15:40:13 16 this stage of the negotiations. But then I had
 15:40:18 17 changed and thought it was better to go the
 15:40:22 18 other way and I changed my vote. And I didn't
 15:40:24 19 know what Ken did or -- and I didn't know until
 15:40:27 20 we got the letter, I guess it was a letter, I'm
 15:40:31 21 confused now, that Herron had -- that part of
 15:40:36 22 that was the reason he quit. The reason I had
 15:40:39 23 in my mind was business reasons for being in
 15:40:44 24 South America that he may have to move down
 15:40:46 25 there and he wouldn't be able to make it.

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15:40:49 1 Q. Mr. Zoellner --
 15:40:50 2 MR. BURKE: Mr. Zoellner, let me
 15:40:52 3 also represent to you that if someone has led
 15:40:55 4 you to believe what Mr. Herron's letter says in
 15:40:58 5 terms of reasons, his letter is here and you do
 15:41:01 6 not have to accept any characterizations
 15:41:04 7 anywhere as to what the letter says. The
 15:41:06 8 letter says what it says. And that is
 15:41:08 9 exhibit -- Herron Exhibit 3, so you don't have
 15:41:10 10 to get confused.
 15:41:12 11 A. Okay.
 15:41:25 12 Q. Mr. Zoellner, it was no secret
 15:41:26 13 that Mr. Herron was against the transaction,
 15:41:29 14 correct?
 15:41:30 15 MR. BURKE: Objection. Asked and
 15:41:32 16 answered. This is just beating a dead horse.
 15:41:33 17 We've gone over this 15 times.
 15:41:40 18 A. At this stage know that he was
 15:41:45 19 against it, I believe it --
 15:41:46 20 Q. At what stage?
 15:41:48 21 A. Today you told me that he was
 15:41:50 22 completely against it. I didn't know it was
 15:41:58 23 the main reason for him quitting.
 15:42:06 24 Q. Okay.
 15:42:07 25 MR. BURKE: Mr. Zoellner, are you

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15:43:19 1 in some fashion?
 15:43:21 2 MR. BURKE: Read that back. That
 15:43:22 3 made no sense.
 15:43:22 4 (Record read by Reporter.)
 15:43:42 5 MR. BURKE: I misunderstood. No
 15:43:43 6 objection. You may answer if you know.
 15:43:49 7 A. I don't know why it would have to
 15:43:51 8 be disclosed. All it -- it was either passed
 15:43:59 9 or didn't pass, so there would be votes for and
 15:44:02 10 votes against it. And I don't know whether we
 15:44:07 11 had to send out a special mailing on it. I
 15:44:10 12 don't believe it --
 15:44:15 13 Q. Did I say anything about a special
 15:44:17 14 mailing in that question, Mr. Zoellner?
 15:44:18 15 A. No.
 15:44:20 16 Q. Okay.
 15:44:20 17 A. I did.
 15:44:21 18 Q. Again, let's put Defendant's
 15:44:29 19 Exhibit 1 in front of you. You did disclose
 15:44:32 20 that the vote to approve the transaction was
 15:44:34 21 unanimous, correct?
 15:44:35 22 MR. BURKE: Objection. Asked and
 15:44:36 23 answered.
 15:44:39 24 A. Whatever it says in the records.
 15:44:44 25 I don't recall now.

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15:42:08 1 tired?
 15:42:08 2 A. Yeah, I'm ready to go home.
 15:42:10 3 MR. BURKE: Yeah, I figured.
 15:42:21 4 Q. With respect to Mr. Hanauer's
 15:42:22 5 deposition, you heard me read the words in
 15:42:26 6 effect that Mr. Hanauer just gave up, correct?
 15:42:29 7 A. I heard you say that, yes.
 15:42:31 8 Q. Do you think it's fair that the
 15:42:32 9 shareholders were not informed of that?
 15:42:35 10 MR. BURKE: Objection.
 15:42:39 11 A. I don't know. I can't make that
 15:42:41 12 decision.
 15:42:43 13 Q. What factors would you need to
 15:42:45 14 come to some kind of a conclusion with respect
 15:42:47 15 to that issue?
 15:42:48 16 MR. BURKE: Objection. Calls for
 15:42:49 17 speculation.
 15:42:49 18 A. I, I don't know. I don't know.
 15:42:51 19 I -- I can't answer that.
 15:43:00 20 Q. Okay. I was asking you some
 15:43:01 21 questions about dissenting votes. If -- is it
 15:43:05 22 your understanding that if someone had voted
 15:43:08 23 affirmatively against the transaction at the
 15:43:12 24 August 2nd, 1999 vote on the merger, that that
 15:43:17 25 would have to be disclosed to the shareholders

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15:44:54 1 Q. Okay. Do you remember any
 15:44:57 2 discussions during Board meetings about
 15:45:02 3 dissenting votes?
 15:45:06 4 MR. BURKE: Objection. Asked and
 15:45:07 5 answered.
 15:45:09 6 A. I don't think there was any
 15:45:10 7 discussion about dissenting votes or just --
 15:45:18 8 whether it was for or against and what was the
 15:45:22 9 results.
 15:45:23 10 Q. Okay. If you could just look at
 15:45:24 11 page 764 again briefly.
 15:45:28 12 MR. BURKE: Continuing objection.
 15:45:30 13 Q. Do you see lines nine through
 15:45:33 14 twelve? Again, this is Ken Hanauer speaking:
 15:45:36 15 We had discussed the ramifications of
 15:45:39 16 dissenting votes when we came to publication.
 15:45:41 17 Do you see that?
 15:45:43 18 MR. BURKE: Where are we? Okay.
 15:45:44 19 Q. Line twelve.
 15:45:55 20 A. I do not remember any of that.
 15:46:02 21 Q. Okay. Defendant's Exhibit 1 --
 15:46:03 22 let me ask a different question. How did
 15:46:06 23 Defendant's Exhibit 1, the proxy materials,
 15:46:09 24 come into existence? Did you write it, did Ken
 15:46:12 25 Hanauer write it, did someone else write it?

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15:46:15 1 MR. BURKE: Objection. Asked and
 15:46:16 2 answered. He's already talked about this at
 15:46:18 3 length.
 15:46:19 4 A. How did the dissenting votes?
 15:46:21 5 Q. No, no, how did Defendant's
 15:46:23 6 Exhibit 1 come into being?
 15:46:27 7 A. I don't understand. How did --
 15:46:30 8 give me that again.
 15:46:31 9 Q. Okay.
 15:46:31 10 A. I'm not --
 15:46:34 11 Q. You had the proxy materials,
 15:46:42 12 correct, in this case? You're not following
 15:46:42 13 me, okay. When the OHSL Board decided to merge
 15:46:44 14 with Provident --
 15:46:45 15 A. Yes.
 15:46:45 16 Q. -- you had to have shareholder
 15:46:46 17 approval, correct?
 15:46:48 18 A. Yes, that's what it -- the special
 15:46:53 19 meeting.
 15:46:54 20 Q. All right. But before the special
 15:46:56 21 meeting the shareholders had to be informed in
 15:46:58 22 some fashion that this is what the Board
 15:47:00 23 decided, correct?
 15:47:04 24 A. I do not know how that was
 15:47:05 25 handled. Ken handled that again.

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15:48:09 1 A. Ken Hanauer, with -- I think I
 15:48:14 2 read somewhere in here, with the help of legal
 15:48:16 3 counsel.
 15:48:19 4 Q. And what role, if any, did the
 15:48:21 5 OHSL Board have in reviewing these proxy
 15:48:27 6 materials before they were finalized and sent
 15:48:29 7 to the shareholders?
 15:48:30 8 MR. BURKE: Objection.
 15:48:30 9 Foundation. You may answer.
 15:48:32 10 A. I don't know that. I don't know
 15:48:33 11 that.
 15:48:36 12 Q. Did you personally have any role
 15:48:37 13 in reviewing the proxy materials before they
 15:48:41 14 were finalized and sent to the shareholders?
 15:48:43 15 A. No. Not that I know of.
 15:48:45 16 Q. Why not?
 15:48:47 17 A. I don't know. I don't know why.
 15:49:11 18 MR. BRAUTIGAM: Let's just take a
 15:49:12 19 short break.
 15:49:12 20 (Discussion off the record.)
 15:50:32 21 BY MR. BRAUTIGAM:
 15:50:33 22 Q. Mr. Zoellner, did Ken Hanauer ever
 15:50:35 23 lose the confidence of the OHSL Board?
 15:50:39 24 MR. BURKE: Objection to
 15:50:39 25 relevance. You can answer.

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15:47:14 1 Q. Okay. Were the proxy materials
 15:47:15 2 created to inform the shareholders as to the
 15:47:19 3 terms of the merger?
 15:47:28 4 MR. BURKE: Objection. Asked and
 15:47:30 5 answered. Calls for a legal conclusion. You
 15:47:31 6 may answer.
 15:47:33 7 MR. BRAUTIGAM: Okay. Withdrawn.
 15:47:34 8 Were proxy materials created?
 15:47:40 9 MR. BURKE: Of course they were,
 15:47:41 10 counsel.
 15:47:42 11 MR. BRAUTIGAM: Jim, I'm not ready
 15:47:43 12 for your deposition yet.
 15:47:44 13 MR. BURKE: We'll stipulate to
 15:47:45 14 that. Of course they were created.
 15:47:45 15 BY MR. BRAUTIGAM:
 15:47:48 16 Q. Were proxy materials created?
 15:47:51 17 A. Yes. They were mailed out.
 15:47:53 18 Q. Okay. Why were they created?
 15:47:55 19 MR. BURKE: Objection. Asked and
 15:47:56 20 answered.
 15:47:58 21 A. So that the stockholders could
 15:48:00 22 vote for the sale or be against it, for or
 15:48:05 23 against.
 15:48:06 24 Q. How were the proxy materials
 15:48:08 25 created?

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15:50:41 1 A. I did not know that.
 15:50:42 2 Q. No, I'm asking.
 15:50:44 3 A. I don't know whether he lost
 15:50:45 4 confidence in the Board.
 15:50:50 5 Q. No, no, confidence of the Board,
 15:50:52 6 not in the Board. Did the Board of Directors
 15:50:56 7 collectively ever lose confidence in Ken
 15:50:59 8 Hanauer's ability to run the show, so to speak?
 15:51:01 9 A. Oh, I thought you reversed that.
 15:51:03 10 Q. No, no.
 15:51:05 11 A. Not that I know of, no.
 15:51:07 12 Q. Never?
 15:51:08 13 MR. BURKE: Objection. Asked and
 15:51:09 14 answered.
 15:51:10 15 A. No.
 15:51:11 16 Q. Okay. Mr. Zoellner, you were on
 15:51:12 17 the accounting committee throughout your tenure
 15:51:15 18 as an OHSL director, correct?
 15:51:20 19 A. All right, yes.
 15:51:21 20 Q. Were there ever significant
 15:51:24 21 accounting problems that OHSL experienced?
 15:51:28 22 MR. BURKE: Objection to
 15:51:28 23 relevance. This has nothing to do with your
 15:51:30 24 lawsuit, Mr. Brautigam, with all due represent.
 15:51:33 25 You may answer.

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15:51:34 1 A. Not that I know of.
 15:51:36 2 Q. Was there ever a time that OHSL
 15:51:39 3 didn't know the numbers in the general ledger?
 15:51:41 4 MR. BURKE: Objection to
 15:51:41 5 relevance.
 15:51:43 6 A. Not that I know of.
 15:51:44 7 Q. Did OHSL experience a computer
 15:51:47 8 conversion at some point in the late nineties?
 15:51:53 9 MR. BURKE: Continuing objection
 15:51:54 10 to relevance.
 15:51:56 11 A. Did they change computers?
 15:52:01 12 Q. Some kind of a switch from one
 15:52:02 13 system to another.
 15:52:04 14 A. Yes.
 15:52:04 15 Q. How would you describe that
 15:52:05 16 transaction?
 15:52:06 17 A. I can't describe it. All I know
 15:52:07 18 is they did it. I don't know how.
 15:52:11 19 Q. You can't describe it at all?
 15:52:12 20 A. No.
 15:52:13 21 Q. Why not?
 15:52:14 22 MR. BURKE: Objection, counsel.
 15:52:16 23 A. I don't know anything about it,
 15:52:18 24 whether it -- our accounting, outside
 15:52:22 25 accountant firm took care of most of that, I

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15:53:57 1 MR. MOORE: Objection.
 15:53:57 2 A. Yes.
 15:53:58 3 Q. It doesn't bother you that you
 15:53:59 4 relied on advice from Dinsmore & Shohl and
 15:54:01 5 you're sitting here today sued?
 15:54:03 6 MR. MOORE: Objection. That goes
 15:54:05 7 to the complaint itself and whether or not the
 15:54:06 8 complaint has any validity, but if you think
 15:54:09 9 you can answer, go ahead.
 15:54:12 10 A. I'm satisfied with it.
 15:54:25 11 Q. Have you ever seen any of the
 15:54:27 12 documents filed in your name in this action?
 15:54:45 13 A. I don't remember any. There could
 15:54:49 14 be, but I don't know.
 15:54:51 15 Q. Is it important to you that any
 15:54:59 16 documents filed in your name be accurate?
 15:54:59 17 MR. BURKE: Objection.
 15:54:59 18 MR. MOORE: Objection.
 15:55:02 19 A. Well, I'd hope they'd be accurate,
 15:55:05 20 truthful.
 15:55:05 21 Q. Why?
 15:55:07 22 A. Because that's the way to live by,
 15:55:08 23 that's the thing to do.
 15:55:12 24 Q. Is there anything in the proxy
 15:55:14 25 materials that you believe is inaccurate, based

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15:52:25 1 think. I don't know.
 15:52:27 2 Q. What was your role as a member of
 15:52:30 3 the audit committee?
 15:52:40 4 A. What was my role? I don't
 15:52:55 5 remember. I don't remember what I did.
 15:52:56 6 Q. Generally speaking, what is the
 15:52:58 7 role of a member of an audit committee for a
 15:53:01 8 public company?
 15:53:08 9 A. Well, in this particular case we
 15:53:09 10 had outside auditors, so we reviewed what they
 15:53:14 11 gave us. That's what the committee did. We --
 15:53:19 12 I can't think of the firm now, they're out of
 15:53:22 13 Indianapolis, who was the accounting firm that
 15:53:26 14 did our auditing and advised us on different
 15:53:30 15 things.
 15:53:31 16 Q. Mr. Zoellner, what was the
 15:53:32 17 function of Dinsmore & Shohl in this merger?
 15:53:36 18 MR. BURKE: Objection. Asked and
 15:53:37 19 answered.
 15:53:37 20 MR. MOORE: Objection.
 15:53:44 21 A. They were our legal counsel,
 15:53:46 22 advising us on ways to do things.
 15:53:50 23 Q. And as you sit here today, are you
 15:53:52 24 satisfied with the voice that they provided
 15:53:57 25 you?

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15:55:17 1 on our discussion today or otherwise?
 15:55:22 2 A. No.
 15:55:22 3 Q. Not even one thing?
 15:55:24 4 A. No. Fine.
 15:56:02 5 MR. BRAUTIGAM: Mr. Zoellner,
 15:56:03 6 subject to additional documents being produced
 15:56:06 7 at some future date, I have no further
 15:56:09 8 questions at this time, and I thank you for
 15:56:10 9 your time.
 15:56:12 10 THE WITNESS: Thank you.
 15:56:12 11 DIRECT EXAMINATION
 15:56:13 12 BY MR. BURKE:
 15:56:13 13 Q. Mr. Zoellner, I have a couple of
 15:56:15 14 questions, these are brief. Mr. Brautigam
 15:56:16 15 never asked you about your background. When
 15:56:18 16 were you born?
 15:56:20 17 A. February 25th, '21.
 15:56:22 18 Q. How old are you, sir?
 15:56:24 19 A. Eighty years old.
 15:56:25 20 Q. And what was your work experience?
 15:56:28 21 A. I had my own accounting firm.
 15:56:32 22 Q. And when did you retire?
 15:56:34 23 A. 1989.
 15:56:35 24 Q. So you've been retired for
 15:56:36 25 approximately twelve years?

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15:56:38 1 A. Yeah.
 15:56:40 2 Q. How good is your memory of the
 15:56:43 3 day-to-day details that Mr. Brautigam has been
 15:56:46 4 asking you about today?
 15:56:47 5 MR. BRAUTIGAM: Objection to the
 15:56:48 6 "day-to-day details."
 15:56:50 7 A. Not too good.
 15:56:51 8 Q. Were there things that Mr.
 15:56:53 9 Brautigam told you today that were -- you did
 15:56:57 10 not know?
 15:56:59 11 MR. BRAUTIGAM: Objection.
 15:57:02 12 A. Should I answer?
 15:57:03 13 MR. BRAUTIGAM: Yes.
 15:57:04 14 A. Yes, yes.
 15:57:05 15 Q. Okay. And some of the things Mr.
 15:57:06 16 Brautigam said to you today, did you accept
 15:57:09 17 them just because he told them to you?
 15:57:11 18 MR. BRAUTIGAM: Objection.
 15:57:12 19 A. Well, the way I understood them.
 15:57:14 20 I might have misunderstood it, but as I
 15:57:17 21 understood it, I -- I answered as truthfully as
 15:57:20 22 I could.
 15:57:21 23 Q. And specifically with Mr. Hanauer
 15:57:22 24 and Mr. Herron, let's talk about that. Mr.
 15:57:25 25 Brautigam talked to you about Mr. Herron's

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15:58:17 1 Q. Take a look at that.
 15:58:20 2 A. Due to increasing responsibility,
 15:58:23 3 commitment to the company, I hereby tender my
 15:58:27 4 resignation as a member of the Board of
 15:58:29 5 Directors of Oak Hills Savings & Loan effective
 15:58:32 6 July 30th.
 15:58:33 7 Q. Now, read the -- you don't have to
 15:58:35 8 read it out loud, just read it to yourself.
 15:58:38 9 A. Okay. Yeah, he --
 15:58:51 10 Q. Now, let me --
 15:58:53 11 MR. BRAUTIGAM: Jim, you
 15:58:54 12 interrupted the answer. I think he was
 15:58:55 13 speaking.
 15:58:56 14 MR. BURKE: I think I was asking
 15:58:58 15 him to read the letter.
 15:59:00 16 MR. BRAUTIGAM: Jim, you
 15:59:01 17 interrupted him, that's the point.
 15:59:01 18 BY MR. BURKE:
 15:59:02 19 Q. Have you had an opportunity to
 15:59:03 20 read the resignation letter?
 15:59:05 21 A. Half of it.
 15:59:06 22 Q. Read the rest of it, if you would.
 15:59:09 23 A. All right.
 15:59:29 24 Q. Have you read that?
 15:59:30 25 A. Yes.

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15:57:27 1 resignation a number of times and what his
 15:57:30 2 reasons were. Do you remember that?
 15:57:31 3 A. Um-hmm.
 15:57:32 4 Q. And you also testified as to what
 15:57:34 5 your understanding of his reasons were back at
 15:57:36 6 that time, correct?
 15:57:37 7 A. Um-hmm, yes.
 15:57:37 8 Q. And do you remember what you
 15:57:38 9 testified to as to what you understood his
 15:57:40 10 reasons for resigning to be?
 15:57:42 11 A. Yes.
 15:57:43 12 Q. What were they?
 15:57:46 13 A. The majority was because of his
 15:57:48 14 job in South America. I think it was Brazil.
 15:57:55 15 Q. Did he say anything to you at that
 15:57:57 16 time about another reason for his resignation
 15:58:00 17 being any opposition? Did he ever say that to
 15:58:02 18 you?
 15:58:03 19 A. Not that I remember.
 15:58:04 20 Q. Take a look at Herron Exhibit 3.
 15:58:06 21 That's Mr. -- what has been represented to you
 15:58:09 22 by counsel for the plaintiff, that is Mr.
 15:58:12 23 Herron's resignation letter itself, dated July
 15:58:15 24 27, 1999.
 15:58:16 25 A. Um-hmm.

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15:59:30 1 Q. Okay. Are you finished reading
 15:59:32 2 the resignation letter --
 15:59:33 3 A. Yes.
 15:59:34 4 Q. -- that Mr. Herron sent to the
 15:59:36 5 Board on July 27, 1999?
 15:59:38 6 A. Yes.
 15:59:38 7 Q. Does that letter say anything
 15:59:39 8 about any opposition to the discussions about a
 15:59:43 9 possible merger?
 15:59:46 10 A. Pardon?
 15:59:46 11 Q. Let me ask it again. Does that
 15:59:47 12 letter say anything at all about Mr. Herron's
 15:59:51 13 alleged opposition to any merger discussions
 15:59:55 14 being a reason for his resignation?
 15:59:59 15 MR. BRAUTIGAM: Objection.
 15:59:59 16 A. I don't read anything in there
 16:00:00 17 that is an objection to the -- the only thing
 16:00:05 18 that exercise -- is not going to exercise his
 16:00:09 19 stock option.
 16:00:10 20 MR. BURKE: Right.
 16:00:12 21 A. And we said to him to, or at least
 16:00:14 22 I did, you ought to do that, it's to your
 16:00:17 23 advantage, but --
 16:00:18 24 Q. But does this say anything about
 16:00:20 25 him being opposed to the transaction?

16:00:20 1 A. No.
 16:00:22 2 Q. Does it say anything in there
 16:00:23 3 about him resigning in protest?
 16:00:23 4 A. No.
 16:00:26 5 Q. And did Mr. Herron ever use those
 16:00:28 6 words to you, that he was resigning in protest
 16:00:31 7 over the discussions?
 16:00:32 8 A. No, no.
 16:00:34 9 Q. Mr. Brautigam talked to you about
 16:00:35 10 Mr. Hanauer and made you go through pages of
 16:00:37 11 deposition testimony. Back in 1999, did Mr.
 16:00:41 12 Hanauer ever tell you that he had changed his
 16:00:44 13 mind since his vote as a director and was going
 16:00:49 14 to vote his personal shares against the
 16:00:51 15 Provident-Oak Hills merger?
 16:00:53 16 MR. BRAUTIGAM: Objection.
 16:00:54 17 A. No, I -- I never talked about
 16:00:58 18 shares with, with Ken.
 16:01:02 19 Q. And after the decision was made to
 16:01:10 20 proceed with the Provident transaction, did Mr.
 16:01:10 21 Hanauer ever come to you, or to your knowledge
 16:01:12 22 anyone else on the Board, and talk about any
 16:01:13 23 opposition to that transaction or how he was
 16:01:15 24 going to vote his personal shares?
 16:01:18 25 MR. BRAUTIGAM: Objection.

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16:01:56 1 A. I went -- I had to have half of my
 16:01:59 2 credits for college to get in, then I finished
 16:02:01 3 it up when I came back.
 16:02:03 4 Q. Where did you finish up?
 16:02:04 5 A. UC, business administration.
 16:02:05 6 Q. Okay. And thereafter then you
 16:02:06 7 started your own business?
 16:02:08 8 A. Yes.
 16:02:08 9 Q. And you operated that business it
 16:02:10 10 looks to me like for approximately 45 years?
 16:02:13 11 A. Yes.
 16:02:14 12 Q. Where was your business located?
 16:02:16 13 A. Glenway Avenue -- not Glenway --
 16:02:18 14 yeah, Glenway Avenue.
 16:02:21 15 Q. And again, as you were talking
 16:02:23 16 with your attorney, now that you've been
 16:02:25 17 retired for almost twelve years, those sort of
 16:02:28 18 details have sort of gone by the wayside?
 16:02:31 19 A. They're tough. When you get this
 16:02:33 20 old, it's even hard to remember what you had
 16:02:36 21 for breakfast.
 16:02:37 22 Q. Well, you had a bagel today, I can
 16:02:39 23 tell you.
 16:02:40 24 A. I'll put that in my pocket, then I
 16:02:41 25 can remember.

16:01:19 1 A. No.
 16:01:19 2 MR. BURKE: I have nothing
 16:01:20 3 further.
 16:01:20 4 CROSS-EXAMINATION
 16:01:21 5 BY MR. MOORE:
 16:01:21 6 Q. Sir, my name is Christopher Moore
 16:01:24 7 and I'm here for Dinsmore & Shohl. I just want
 16:01:26 8 to ask you a couple more background questions
 16:01:28 9 if you don't mind.
 16:01:30 10 I don't want to pry, but I do
 16:01:32 11 think it's important for anyone to read this to
 16:01:35 12 know more about you. Were you born and raised
 16:01:38 13 in this area?
 16:01:39 14 A. Western Hills.
 16:01:39 15 Q. And I believe you testified
 16:01:40 16 earlier that you actually served in World War
 16:01:43 17 II on behalf of our country?
 16:01:44 18 A. Four years.
 16:01:45 19 Q. And what was your rank when you
 16:01:47 20 went in?
 16:01:48 21 A. Ensign.
 16:01:49 22 Q. And what did you come out as?
 16:01:51 23 A. Lieutenant.
 16:01:52 24 Q. Lieutenant. And after serving our
 16:01:53 25 country, did you then go to college?

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16:02:42 1 Q. Glenway Avenue. Just so anyone
 16:02:44 2 reading this is clear, that's in Cincinnati,
 16:02:45 3 correct?
 16:02:46 4 A. Yes, Price Hill.
 16:02:47 5 Q. With the exception of your years
 16:02:49 6 in the armed services serving our country,
 16:02:51 7 you've essentially lived in Cincinnati,
 16:02:53 8 correct?
 16:02:53 9 A. That is correct.
 16:02:54 10 Q. That's where you were married, in
 16:02:55 11 Cincinnati?
 16:02:56 12 A. That is correct.
 16:02:57 13 Q. Did you raise a family?
 16:02:58 14 A. That is correct, five children.
 16:02:59 15 Q. Five children, all live in
 16:03:00 16 Cincinnati?
 16:03:01 17 A. All --
 16:03:02 18 Q. Well, you raised them in
 16:03:03 19 Cincinnati?
 16:03:04 20 A. Yeah. Centerville is the furthest
 16:03:06 21 one away.
 16:03:07 22 Q. Okay. But you've essentially
 16:03:09 23 lived your entire life in this city?
 16:03:11 24 A. Yes.
 16:03:12 25 MR. BRAUTIGAM: Objection. Wait

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16:03:13 1 for the question.
 16:03:15 2 Q. Those kind of questions -- you can
 16:03:16 3 jump in on any of those kinds of questions.
 16:03:19 4 A. I'm too quick, I've got to slow
 16:03:20 5 up.
 16:03:22 6 MR. BRAUTIGAM: I think Lee Ann
 16:03:22 7 would disagree with you.
 16:03:24 8 Q. She's used to me talking fast. I
 16:03:27 9 have one more question closer to this matter
 16:03:29 10 for you. You were asked some questions today
 16:03:31 11 about what you knew, when and where. I want to
 16:03:33 12 give you a hypothetical. Assume with me that
 16:03:35 13 at the time you were voting on this agreement,
 16:03:37 14 you knew that Mr. Herron was resigning because
 16:03:40 15 of this deal, okay, and you knew that Mr.
 16:03:42 16 Hanauer, in fact, intended to vote his personal
 16:03:45 17 shares against this deal. From what I'm
 16:03:48 18 hearing from you, you still would have voted in
 16:03:50 19 favor of this deal though?
 16:03:51 20 A. Oh, yes, yes.
 16:03:52 21 Q. You believed it was the best deal
 16:03:53 22 for the shareholders?
 16:03:54 23 A. Yes.
 16:03:55 24 Q. So whether or not those
 16:03:56 25 individuals were doing things that you did or

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16:04:33 1 correct.
 16:04:36 2 MR. BRAUTIGAM: Right.
 16:04:36 3 BY MR. BRAUTIGAM:
 16:04:37 4 Q. Knowing what you know today, would
 16:04:39 5 you have insisted that the proxy materials be
 16:04:41 6 changed to reflect this new knowledge?
 16:04:44 7 MR. BURKE: Objection.
 16:04:44 8 MR. MOORE: Objection.
 16:04:46 9 MR. BURKE: Assumes facts not in
 16:04:47 10 evidence, calls for speculation. Those are not
 16:04:49 11 the facts. You may answer.
 16:04:51 12 A. No.
 16:04:52 13 Q. Why not?
 16:04:54 14 A. They all did the best they could.
 16:04:57 15 And they're all friends of mine. Even Walter
 16:05:00 16 is a friend of mine. I hired Walter, so I, I
 16:05:05 17 have no animosity to any of them.
 16:05:11 18 Q. Mr. Zoellner, my question had
 16:05:12 19 nothing to do with animosity. My question is:
 16:05:15 20 Would you have insisted that the proxy
 16:05:17 21 materials --
 16:05:18 22 A. No, I --
 16:05:19 23 Q. Can I finish my question?
 16:05:20 24 A. Oh, pardon me.
 16:05:21 25 Q. -- be changed to reflect that

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16:03:57 1 didn't know about was really irrelevant to your
 16:04:00 2 decision-making process?
 16:04:02 3 A. That is true.
 16:04:03 4 Q. You made your decision based on
 16:04:04 5 the information in front of you?
 16:04:05 6 A. Yes.
 16:04:05 7 Q. And it's your opinion as you sit
 16:04:07 8 here today that the decision was -- the best
 16:04:09 9 decision, if you will, was to approve the
 16:04:11 10 merger?
 16:04:12 11 A. Yes.
 16:04:12 12 MR. MOORE: Thank you.
 16:04:14 13 MR. BRAUTIGAM: Okay. Mr.
 16:04:14 14 Zoellner, I actually have some follow-up
 16:04:16 15 questions based on Mr. Burke and based on
 16:04:19 16 Chris.
 16:04:19 17 RE-CROSS-EXAMINATION
 16:04:22 18 BY MR. BRAUTIGAM:
 16:04:22 19 Q. Chris just asked you, knowing what
 16:04:23 20 you know today, essentially, would you have
 16:04:25 21 voted your personal shares differently. And
 16:04:27 22 you answered no, correct?
 16:04:28 23 A. Yes.
 16:04:29 24 MR. MOORE: I object. I said
 16:04:30 25 hypothetically assuming those things to be

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16:05:23 1 information?
 16:05:23 2 MR. BURKE: Objection.
 16:05:24 3 A. No, I wouldn't do it.
 16:05:29 4 Q. Why not?
 16:05:29 5 A. I don't think it's necessary.
 16:05:29 6 That's a matter of opinion.
 16:05:33 7 Q. Okay. With respect to Mr.
 16:05:36 8 Herron's resignation letter, Mr. Herron in
 16:05:38 9 effect left money on the table, correct?
 16:05:41 10 A. Yes.
 16:05:42 11 MR. BURKE: Objection.
 16:05:42 12 Q. And not only with respect to the
 16:05:43 13 stock options, but with respect to the \$900 a
 16:05:46 14 month for 24 months that he could have received
 16:05:50 15 as an advisory director to Provident?
 16:05:52 16 A. That's correct.
 16:05:52 17 MR. BURKE: Objection. Calls for
 16:05:53 18 speculation.
 16:05:53 19 Q. And you testified that your duties
 16:05:55 20 and responsibilities to earn this 900 per month
 16:05:59 21 are essentially nothing, correct?
 16:06:00 22 MR. BURKE: Objection.
 16:06:01 23 Mischaracterizes the prior testimony,
 16:06:02 24 argumentative.
 16:06:03 25 Q. Is that -- different question.

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16:06:05 1 What if anything do you do to earn your 900 per
 16:06:08 2 month from Provident?
 16:06:10 3 A. I think I answered that when we
 16:06:11 4 started out.
 16:06:11 5 Q. I think you did as well, I just
 16:06:13 6 want to clarify, because Provident hasn't asked
 16:06:16 7 you to do anything, correct?
 16:06:18 8 A. No.
 16:06:18 9 Q. Whatever you do to the benefit of
 16:06:20 10 Provident or not, you're doing on your own,
 16:06:22 11 correct?
 16:06:23 12 MR. BURKE: Objection.
 16:06:24 13 Mischaracterizes the testimony.
 16:06:25 14 A. Yes.
 16:06:25 15 Q. So you have no duties and
 16:06:26 16 responsibilities that earn the \$900 a month,
 16:06:30 17 correct?
 16:06:31 18 A. No. That was part of the deal,
 16:06:33 19 part of the purchase and sale.
 16:06:39 20 Q. What was part of the deal?
 16:06:40 21 A. About the employees would get so
 16:06:41 22 much of their pay if they left. The directors
 16:06:44 23 would get, as you said, \$900 a month.
 16:06:48 24 Q. But my point is, you don't have to
 16:06:51 25 do anything to receive that money, correct?

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16:07:54 1 Q. Why not?
 16:07:55 2 A. I haven't gotten around to it.
 16:07:56 3 I've -- my knees and back are too bad.
 16:08:00 4 Q. Mr. Zoellner, are you familiar
 16:08:01 5 with the phrase to use something as a sword and
 16:08:04 6 not as a shield?
 16:08:06 7 MR. BURKE: Objection to form.
 16:08:07 8 A. No. I don't know what you're
 16:08:08 9 referring to.
 16:08:15 10 Q. Now, you testified when Mr. Burke
 16:08:17 11 was asking you the questions, that when you
 16:08:20 12 talked to Mr. Herron on the phone, he said a
 16:08:23 13 majority of the reasons for his resignation was
 16:08:27 14 because of his job in Brazil; is that right? I
 16:08:29 15 wrote it down, I want to make sure I have your
 16:08:32 16 testimony accurately.
 16:08:33 17 A. Yes.
 16:08:33 18 Q. What was the rest of his reason
 16:08:34 19 for resigning? You said "the majority," so
 16:08:37 20 that implies there was something else.
 16:08:39 21 A. I don't know if there was, but we
 16:08:40 22 had different conversations like this one,
 16:08:42 23 don't forget to call me to play golf and stuff
 16:08:44 24 like that. It was just a friendly call.
 16:08:48 25 Q. Okay. Since July 27th, 1999, what

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16:06:52 1 A. That is correct.
 16:06:56 2 Q. Okay. Now, did Mr. Herron tell
 16:06:58 3 you why he left money on the table?
 16:07:00 4 A. No.
 16:07:02 5 Q. He never suggested that it was
 16:07:04 6 because he didn't want to profit from a
 16:07:07 7 transaction --
 16:07:08 8 A. No.
 16:07:09 9 Q. Can I finish my question, please?
 16:07:10 10 A. Oh, I'm sorry.
 16:07:11 11 Q. -- from a transaction that he
 16:07:12 12 fundamentally disagreed with?
 16:07:14 13 MR. MOORE: Objection.
 16:07:15 14 MR. BURKE: Objection.
 16:07:15 15 Mischaracterizes the record. You may answer.
 16:07:19 16 A. We never -- now I lost the
 16:07:25 17 question. What was the question again?
 16:07:25 18 (Record read by Reporter.)
 16:07:38 19 A. No, he never said that to me.
 16:07:42 20 There was only one thing he said to me after I
 16:07:45 21 tried to talk him into it, don't forget to call
 16:07:49 22 me for golf.
 16:07:50 23 Q. Have you played golf with Mr.
 16:07:52 24 Herron since that phone call?
 16:07:54 25 A. No, no.

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16:08:53 1 other conversations have you had with Mr.
 16:08:54 2 Herron?
 16:08:55 3 A. I haven't had any that I remember.
 16:09:07 4 Q. Mr. Zoellner, it seems that one of
 16:09:09 5 the issues in this case is the disclosure of
 16:09:13 6 Mr. Hanauer's true feelings, whatever they were
 16:09:17 7 with respect to this merger. Do you agree with
 16:09:19 8 that?
 16:09:19 9 MR. MOORE: Objection.
 16:09:20 10 MR. BURKE: Objection. Calls for
 16:09:20 11 speculation as to what the issues in the
 16:09:23 12 lawsuit are.
 16:09:23 13 A. I don't know what his feelings
 16:09:25 14 are.
 16:09:26 15 Q. No, no, it's not a question of his
 16:09:28 16 feelings. The question is: Do you understand
 16:09:29 17 that one of the issues in the lawsuit has to do
 16:09:33 18 with Mr. Hanauer's true feelings and whether
 16:09:35 19 they were disclosed or not?
 16:09:37 20 MR. MOORE: Objection.
 16:09:37 21 MR. BURKE: Objection. Calls for
 16:09:38 22 speculation.
 16:09:39 23 A. I don't know anything about that.
 16:10:01 24 Q. You testified that the Board of
 16:10:02 25 Directors in substance never inquired of Mr.

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16:10:04 1 Hanauer with respect to his true feelings with
16:10:07 2 regard to certain aspects of the transaction;
16:10:10 3 is that fair?

16:10:11 4 MR. BURKE: Objection. Beyond the
16:10:11 5 scope of cross. You may answer.

16:10:13 6 A. What did I say? That the Board
16:10:17 7 did not do what?

16:10:18 8 Q. Did not inquire of Mr. Hanauer
16:10:22 9 with respect to his true feelings. And my
16:10:26 10 question is, is that correct?

16:10:29 11 A. I do not know what the rest of the
16:10:31 12 people on the Board did. I don't know whether
16:10:34 13 they talked to him and asked him about anything
16:10:38 14 or not.

16:10:38 15 Q. Well, did this ever happen at
16:10:40 16 Board meetings?

16:10:41 17 MR. BURKE: What?

16:10:43 18 Q. Did anyone at Board meetings -- in
16:10:45 19 other words, you said you don't know what the
16:10:46 20 other members or directors did.

16:10:49 21 A. Yeah.

16:10:50 22 Q. But you would know what they did
16:10:52 23 with respect to Board meetings that you
16:10:54 24 attended.

16:10:54 25 A. Yes.

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(Deposition concluded at 4:05 p.m.)

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16:10:55 1 Q. And even with respect to Board
16:10:57 2 meetings that you missed, you would find out
16:11:05 3 what happened because you would get the minutes
16:11:05 4 and review them, correct?

16:11:05 5 A. I don't know of anything that
16:11:05 6 would -- was said that wasn't already said for
16:11:10 7 -- at our Board meetings after he wasn't there.
16:11:13 8 Nobody put him down or nothing else, just
16:11:16 9 accepted it.

16:11:18 10 Q. Accepted what?

16:11:19 11 A. His resignation.

16:11:22 12 Q. Actually we were talking about Mr.
16:11:23 13 Hanauer.

16:11:24 14 A. Oh, Hanauer. Oh, I'm sorry, I had
16:11:27 15 Tom Herron in my mind.

16:11:31 16 MR. BRAUTIGAM: Okay. Mr.
16:11:31 17 Zoellner, I have nothing further at this time.

16:11:33 18 MR. BURKE: Thank you.

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CERTIFICATE

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2 STATE OF OHIO:

3 SS:
COUNTY OF HAMILTON:

4 I, Lee Ann Williams, a duly qualified
5 and commissioned notary public in and for the
6 State of Ohio, do hereby certify that prior to
7 the giving of his deposition, the within named
8 HOWARD ZOELLNER was by me first duly sworn to
9 testify the truth, the whole truth and nothing
10 but the truth; that the foregoing pages
11 constitute a true and correct transcript of
12 testimony given at said time and place by said
13 deponent; that said deposition was taken by me
14 in stenotypy and transcribed under my
15 supervision; that I am neither a relative of
16 nor attorney for any of the parties to this
17 litigation, nor relative of nor employee of any
18 of their counsel, and have no interest
19 whatsoever in the result of this litigation.

20 IN WITNESS WHEREOF, I hereunto set
21 my hand and official seal of office at
22 Cincinnati, Ohio this ___ day of
23 _____, 2001.

24 MY COMMISSION EXPIRES: _____
25 AUGUST 26, 2004 LEE ANN WILLIAMS, RPR/CRR
NOTARY PUBLIC-STATE OF OHIO